

Laurence A. Weiss (Bar No. 164638)
 Laurence.Weiss@hellerehrman.com
 HELLER EHRMAN LLP
 275 Middlefield Road
 Menlo Park, CA 94025-3506
 Telephone: 650.324.7000
 Facsimile: 650.324.0638

David B. Weinberg (D.C. Bar # 186247)
dweinberg@wileyrein.com
Eric Andreas (D.C. Bar # 462777)
eandreas@wileyrein.com
David E. Markert (D.C. Bar #502486)
dmarkert@wileyrein.com
WILEY REIN LLP
1776 K Street NW
Washington, DC 20006
Telephone: 202.719.7000
Facsimile: 202.719.7049

Attorneys for Intervenor-Defendant
Dow AgroSciences LLC

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

UNITED FARM WORKERS, AFL-CIO,
et al.,

Case No. C 07-03950 JF

Plaintiffs,

**[PROPOSED] ANSWER OF
INTERVENOR-DEFENDANT
DOW AGROSCIENCES LLC TO
FIRST AMENDED COMPLAINT**

V.

ADMINISTRATOR,
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Defendant.

Intervenor Dow AgroSciences LLC (“DAS”) answers Plaintiffs’ First Amended Complaint for Declaratory and Injunctive Relief (“Complaint”) as follows:

1. DAS denies the first, fourth, fifth, and sixth sentences of Paragraph 1. The remainder of Paragraph 1 consists of Plaintiffs' conclusions of law to which no response is required.

1 2. Paragraph 2 consists of Plaintiffs' characterization of their claims in this lawsuit,
2 the relief they seek, and conclusions of law, to which no response is required.

3 3. DAS is without knowledge or information sufficient to form a belief as to the truth
4 of the allegations in Paragraph 3 and therefore denies them.

5 4. DAS is without knowledge or information sufficient to form a belief as to the truth
6 of the allegations in Paragraph 4 and therefore denies them.

7 5. DAS is without knowledge or information sufficient to form a belief as to the truth
8 of the allegations in Paragraph 5 and therefore denies them.

9 6. DAS is without knowledge or information sufficient to form a belief as to the truth
10 of the allegations in Paragraph 6 and therefore denies them.

11 7. DAS is without knowledge or information sufficient to form a belief as to the truth
12 of the allegations in Paragraph 7 and therefore denies them.

13 8. DAS is without knowledge or information sufficient to form a belief as to the truth
14 of the allegations in Paragraph 8 and therefore denies them.

15 9. DAS is without knowledge or information sufficient to form a belief as to the truth
16 of the allegations in Paragraph 9 and therefore denies them.

17 9.1 DAS is without knowledge or information sufficient to form a belief as to the truth
18 of the allegations in Paragraph 9.1 and therefore denies them.

19 10. DAS is without knowledge or information sufficient to form a belief as to the truth
20 of the allegations in Paragraph 10 and therefore denies them.

21 11. DAS is without knowledge or information sufficient to form a belief as to the truth
22 of the allegations in Paragraph 11 and therefore denies them.

23 12. DAS admits that Stephen L. Johnson is Administrator of U.S. EPA, a federal
24 agency. As to the remaining allegations in Paragraph 12, the Federal Insecticide, Fungicide, and
25 Rodenticide Act ("FIFRA") speaks for itself and thus no response is required.

26 13. DAS denies the allegations in Paragraph 13.

27 14. DAS admits that chlorpyrifos is an organophosphate insecticide and that some
28 organophosphates were developed during World War II, but denies that chlorpyrifos was

1 developed during World War II. DAS denies the remaining allegations of Paragraph 14.

2 15. DAS denies the first sentence of Paragraph 15. DAS admits that extreme
3 exposures to organophosphates, including chlorpyrifos, have been associated with some of the
4 effects listed in the second and third sentences of Paragraph 15, but denies that such exposures
5 occur when its products are used in accordance with label directions. The fourth sentence of
6 Paragraph 15 purports to characterize scientific studies which speak for themselves and are the
7 best evidence of their contents.

8 16. DAS admits that inhalation, ingestion, and dermal contact are potential pathways
9 for exposure to chlorpyrifos. DAS denies the remaining allegations of Paragraph 16.

10 17. With regard to the allegations in the first and second sentences of paragraph 17,
11 DAS admits that chlorpyrifos can become airborne after being deposited on soil and leaf surfaces
12 and that this phenomenon is more likely to occur at high temperatures. DAS denies the remaining
13 allegations in the first three sentences of paragraph 17. The fourth sentence of Paragraph 17
14 purports to characterize air monitoring tests which speak for themselves and are the best evidence
15 of their contents.

16 18. DAS admits the allegations in the first two sentences of Paragraph 18. DAS is
17 without knowledge or information sufficient to form a belief as to the truth of the allegations in
18 the remaining sentences of Paragraph 18 and therefore denies them on that basis.

19 19. DAS admits the allegations in the first two sentences of Paragraph 19, but clarifies
20 that the cancellations of residential uses for chlorpyrifos pursuant to the 2000 agreement were
21 voluntary cancellations. With regard to the third sentence of Paragraph 19, DAS admits that
22 protection of corn crops is the largest agricultural use of chlorpyrifos, s, but is without knowledge
23 or information sufficient to form a belief as to the truth of the remaining allegations in the
24 sentence and therefore denies them on that basis.

25 20. Paragraph 20 merely cites and summarizes FIFRA, which speaks for itself; thus no
26 response is required.

27 21. Paragraph 21 merely cites and summarizes FIFRA, which speaks for itself; thus no
28 response is required.

1 22. Paragraph 22 merely cites and summarizes FIFRA, which speaks for itself; thus no
2 response is required.

3 23. Paragraph 23 merely cites and summarizes FIFRA, which speaks for itself; thus no
4 response is required.

5 24. DAS admits EPA conducts human health risk assessments as part of the pesticide
6 reregistration process. The second and third sentences of Paragraph 24 merely summarize and
7 characterize EPA's human health risk assessments, which speak for themselves; thus no response
8 is required.

9 25. The first two sentences of Paragraph 25 merely summarize and characterize EPA's
10 human health risk assessments, which speak for themselves; thus no response is required. DAS
11 denies the remaining allegation of Paragraph 25.

12 26. DAS denies the allegations contained in the first two sentences of Paragraph 26.
13 The third sentence of Paragraph 26 merely cites and summarizes FIFRA, which speaks for itself;
14 thus no response is required.

15 27. DAS admits that EPA prepares ecological assessments in determining whether to
16 register or reregister a pesticide. DAS denies the remaining allegations of the first sentence of
17 Paragraph 27. DAS denies the second sentence of Paragraph 27, except to admit that EPA has
18 established levels of concern for non-target wildlife based on registrant-generated data. The
19 allegations in the third sentence of Paragraph 27 purport to characterize EPA's ecological risk
20 assessments, which speak for themselves; thus no response is required. The allegations in the
21 fourth and fifth sentences of Paragraph 27 contain conclusions of law, to which no response is
22 required.

23 28. The first sentence of Paragraph 28 contains conclusions of law to which no
24 response is required. DAS denies the allegation in the second sentence of Paragraph 28. The
25 third sentence of Paragraph 28 purports to characterize reports which speak for themselves; thus
26 no response is required. DAS denies the allegations in the fourth sentence of Paragraph 28.

27 29. DAS admits only that EPA issued the chlorpyrifos IRED in 2001; the remaining
28 allegations in Paragraph 29 characterize the IRED, which speaks for itself; thus no response is

1 required.

2 30. Paragraph 30 characterizes the IRED, which speaks for itself; thus no response is
3 required.

4 31. Paragraph 31 characterizes the IRED, which speaks for itself; thus no response is
5 required.

6 32. The first and second sentences of Paragraph 32 characterize the IRED, which
7 speaks for itself; thus no response is required. The third sentence of Paragraph 32 characterizes
8 the EPA Memorandum Finalizing IREDs for Organophosphate Pesticides, July 31, 2006, which
9 speaks for itself; thus no response is required.

10 33. Paragraph 33 characterizes the IRED, which speaks for itself; thus no response is
11 required.

12 34. Paragraph 34 characterizes the IRED, which speaks for itself; thus no response is
13 required.

14 35. Paragraph 35 characterizes the IRED, which speaks for itself; thus no response is
15 required.

16 36. Paragraph 36 characterizes the IRED, which speaks for itself; thus no response is
17 required.

18 37. The first sentence of Paragraph 37 characterizes FIFRA, which speaks for itself;
19 thus no response is required. The second sentence of Paragraph 37 is too vague and ambiguous to
20 enable DAS to admit or deny. DAS denies the allegations contained in the third and fourth
21 sentences of Paragraph 37.

22 38. Paragraph 38 characterizes the IRED, which speaks for itself; thus no response is
23 required.

24 39. The first sentence of Paragraph 39 characterizes the IRED, which speaks for itself;
25 thus no response is required. DAS denies the remaining allegations of Paragraph 39.

26 40. The first sentence of Paragraph 40 characterizes the IRED, which speaks for itself;
27 thus no response is required. DAS denies the remaining allegations of Paragraph 40.

28 41. DAS admits that the IRED was called "interim." The remainder of Paragraph 41

1 characterizes the Food Quality Protection Act (“FQPA”), which speaks for itself; thus no
2 response is required.

3 42. Paragraph 42 characterizes the Federal Food Drug and Cosmetic Act (“FFDCA”),
4 which speaks for itself; thus no response is required.

5 43. The first and second sentences of Paragraph 43 characterize the FQPA, which
6 speaks for itself; thus no response is required. The allegations in the third sentence of Paragraph
7 43 purport to quote a public EPA finding in a Federal Register notice, which speaks for itself;
8 thus no response is required.

9 44. Paragraph 44 characterizes the EPA Memorandum Finalizing IREDs for
10 Organophosphate Pesticides, July 31, 2006, which speaks for itself; thus no response is required.

11 45. DAS incorporates by reference its responses to Paragraphs 14 through 44 as
12 though set forth in full.

13 46. Paragraph 46 characterizes and quotes portions of FIFRA, which speaks for itself;
14 thus no response is required.

15 47. Paragraph 47 merely cites and summarizes FIFRA, which speaks for itself; thus no
16 response is required.

17 48. DAS denies the allegations in Paragraph 48.

18 49. Paragraph 49 purports to characterize the IRED, which speaks for itself; thus no
19 response is required.

20 50. Paragraph 50 purports to characterize the IRED, which speaks for itself; thus no
21 response is required.

22 51. Paragraph 51 purports to characterize the IRED, which speaks for itself; thus no
23 response is required.

24 52. The first sentence of Paragraph 52 characterizes FIFRA, which speaks for itself;
25 thus no response is required. The second sentence of Paragraph 52 purports to characterize the
26 EPA Memorandum Finalizing IREDs for Organophosphate Pesticides, July 31, 2006, which
27 speaks for itself; thus no response is required. The third and fourth sentences of Paragraph 52
28 contain conclusions of law, to which no response is required.

1 53. DAS incorporates by reference its responses to Paragraphs 14 through 44 as
2 though set forth in full.

3 54. The first and third sentences of Paragraph 54 merely cite and summarize FIFRA,
4 which speaks for itself; thus no response is required. The second sentence of Paragraph 54
5 contains conclusions of law, to which no response is required.

6 55. The first sentence of Paragraph 55 merely cites and summarizes FIFRA, which
7 speaks for itself; thus no response is required. The second, fourth, fifth, sixth, and seventh
8 sentences of Paragraph 55 contain conclusions of law, to which no response is required. The
9 allegations in the third sentence of Paragraph 55 are vague and ambiguous, and DAS therefore
10 denies them on that basis.

11 56. Paragraph 56 purports to characterize the IRED, which speaks for itself; thus no
12 response is required.

13 57. Paragraph 57 purports to characterize the IRED, which speaks for itself; thus no
14 response is required.

15 58. The first, second, and third sentences of Paragraph 49 quote and purport to
16 characterize the IRED, which speaks for itself; thus no response is required. The fourth sentence
17 of Paragraph 58 characterizes the EPA Memorandum Finalizing IREDs for Organophosphate
18 Pesticides, July 31, 2006, which speaks for itself; thus no response is required. The fifth and sixth
19 sentences of Paragraph 58 contain conclusions of law, to which no response is required.

20 **PRAYER FOR RELIEF**

21 DAS denies that Plaintiffs are entitled to the relief requested.

22 **GENERAL DENIAL**

23 Except as expressly admitted or otherwise stated herein, DAS denies each and every
24 allegation in Plaintiffs' Complaint.

25 **AFFIRMATIVE DEFENSES**

26 A. Plaintiffs have failed to state a claim upon which relief can be granted.

27 B. Plaintiffs have failed to exhaust their administrative remedies.

28 C. Plaintiffs lack standing to bring this case.

1 D. This Court lacks jurisdiction over the subject matter of this case.

2 WHEREFORE, for these reasons, DAS requests that the Court deny Plaintiffs' Complaint
3 with prejudice, that Dow AgroSciences LLC be awarded its costs in this action, and that the Court
4 grant such other and further relief as may be appropriate.

5
6 Respectfully submitted,

7 HELLER EHRMAN LLP
8

9 By: /s/ Laurence A. Weiss

10 David B. Weinberg (D.C. Bar # 186247)
dweinberg@wileyrein.com
11 Eric Andreas (D.C. Bar # 462777)
eandreas@wileyrein.com
12 David E. Markert (D.C. Bar #502486)
dmarkert@wileyrein.com
13 WILEY REIN LLP
1776 K Street NW
14 Washington, DC 20006
Telephone: 202.719.7000
15 Facsimile: 202.719.7049

Laurence A. Weiss
Laurence.Weiss@hellerehrman.com
HELLER EHRMAN LLP
275 Middlefield Road
Menlo Park, CA 94025-3506
Telephone: 650.324.7000
Facsimile: 650.324.0638

16 DATED: December 12, 2007

17 Attorneys for Intervenor-Defendant Dow AgroSciences LLC
18
19
20
21
22
23
24
25
26
27
28